

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

BOMBARDIER INC.,

Plaintiff,

v.

mitsubishi aircraft corporation,
mitsubishi aircraft corporation
america inc., aerospace testing
engineering & certification inc.,
michel korwin-szymanowski,
laurus basson, marc-antoine
delarche, cindy dornéval, keith
ayre, and john and/or jane does 1-
88,

Defendants.

No. _____

DECLARATION OF DAVID
TIDD IN SUPPORT OF MOTION
FOR PRELIMINARY
INJUNCTION

I, David Tidd, declare as follows:

1. I am an employee of Bombardier, Inc. (“Plaintiff”). I have personal knowledge of the matters addressed herein. My position at Bombardier is Vice President, Fly by Wire and Core Engineering. I have extensive experience in performance calculation methodologies for both Computerized and standard Airplane Flight Manuals (“AFM”), including the Computerized AFM (“CAFM”) software and methodology offered by Bombardier to its customers.

2. In my role as Vice President, Fly by Wire and Core Engineering for Bombardier, I have been asked to review Bombardier’s CAFM Calculation Methodology

1 document, a copy of which I understand was taken without authorization by a former
2 Bombardier employee prior to departing Bombardier. For purposes of this declaration, I will
3 refer to this document as the “CAFM Methodology.” I have also been asked to explain
4 whether (and if so, how) the CAFM Methodology discloses information that Bombardier
5 considers to be valuable, proprietary, confidential, and in general not readily ascertainable by
6 way of reverse-engineering or other publicly available means. A copy of the CAFM
7 Methodology, having electronic file name “BM7002.02.15.02 – Flight Performances,” is
8 attached as Exhibit A to this declaration.

9 3. The CAFM Methodology describes the performance calculation methodology
10 of the Computerized Airplane Flight Manual. The CAFM is software used to calculate
11 performance outputs for various scenarios that can occur during flight. I am informed that
12 this is one document former Bombardier employee Cindy Dornéval attempted to email to
13 herself late in the evening on her last day of work and that Bombardier believes she retained
14 prior to her departure from Bombardier.

15 4. The CAFM Methodology contains information that is undoubtedly valuable.
16 Bombardier considers it of high value because it contains, for example, numerous
17 coefficients, coefficients determined by equations and constants that were negotiated with the
18 applicable regulatory authorities, that are used for performance calculations depending on the
19 applicable flight scenario. Moreover, the CAFM Methodology holds incredible value because
20 the coefficients contained within are not all specific to one type of aircraft. Their applicability
21 to any Bombardier aircraft, or any aircraft whatsoever for that matter, allows Bombardier to
22 use the CAFM Methodology with any current Bombardier aircraft’s CAFM and Bombardier
23 can count on using the same CAFM Methodology in the future. Bombardier has invested
24 countless person-hours and sums of money in the development of its CAFM Methodology,
25 notwithstanding the incredible effort that went into negotiating the coefficients and constants
26 disclosed in the CAFM with the regulatory authorities.

5. Given that the CAFM Methodology is highly valuable to Bombardier, Bombardier has marked the document proprietary to Bombardier. Any relevant Bombardier employee with access to the CAFM would know that the CAFM Methodology, and the data contained within it, are proprietary and highly confidential. For example, the coefficients and constants disclosed in the CAFM Methodology include braking coefficients. The airplane-braking coefficient is used in rejected takeoff and in landing distance calculations. It is also used during the calculation of takeoff airspeed. The specific braking coefficient used depends on flight conditions. Bombardier's CAFM Methodology provides a different braking coefficient for dry runways, smooth wet runways, and grooved wet runways. Bombardier arrived at each one of the constants and equations used to determine the braking coefficient for each scenario through testing, research, and through highly confidential negotiations with the applicable regulatory authorities. The CAFM Methodology further includes calculation methodologies for scenarios involving drag on the aircraft from various precipitation conditions, for various airspeed and altitude calibrations, for maximum altitude, weight, mach, load factor, and bank angle scenarios, as well as for takeoff performance, among many others. To be clear, there is a large volume of significant information contained within the CAFM Methodology that is proprietary to Bombardier beyond these cited examples. Just a quick glance at the CAFM Methodology, or any document containing the information within the CAFM Methodology, would readily demonstrate that it is obviously the result of extraordinary investments in time and resources in design, development, and testing of a critical Bombardier aircraft components. And because Bombardier's Code of Ethics—a document I, like all other Bombardier employees, agreed to review, understand, and abide by—clearly identifies this type of information as “Confidential,” any relevant Bombardier employee would know not to use this information for any non-Bombardier-related purpose even if the information were not marked as Private and Confidential.

6. I do not believe the information contained in the CAFM Methodology could be readily ascertained without having access to that information through reverse engineering or

1 some other comparable approach. As noted above, the CAFM Methodology contains
 2 coefficients and constants developed through Bombardier testing and through confidential
 3 negotiations with regulatory authorities. All of this information is highly proprietary to
 4 Bombardier, and none of it is publicly disseminated or available.

5 7. It is for these reasons that the information contained in the CAFM
 6 Methodology, attached as Exhibit A, would have tremendous value to anyone seeking to
 7 implement a CAFM or AFM in a commercial aircraft. All commercial aircraft are required to
 8 have an AFM to obtain their Certificate of Airworthiness ("COA"). Bombardier's CAFM is a
 9 computerized version of an AFM that is more sophisticated than a traditional AFM. Because
 10 of this, the CAFM Methodology would hold incredible value for anyone trying to implement
 11 either an AFM or CAFM in a commercial aircraft. The information therefore provides a
 12 head-start to anyone involved in designing or developing an aircraft AFM that is ultimately
 13 required for flight because the reader now knows with greater certainty the coefficients and
 14 constants that the regulatory authorities have approved for AFM calculations. In other words,
 15 it conveys institutional knowledge of data that, without which, the reader would be forced to
 16 invest significant time and resources to develop independently. The CAFM Methodology is
 17 therefore a shortcut to aircraft airworthiness approval.

18 I declare under penalty of perjury under the laws of the United States of America that
 19 the foregoing is true and correct.

20 EXECUTED at Montreal, QC, Canada, this 17 day of OCTOBER, 2018.

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24 David Tidd
 25 Vice President, Fly by Wire and Core
 26 Engineering, Bombardier, Inc.
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